Jurisdictional Statement

81-1642

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ALEXANDER L. STEVAS
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

BEST INVESTMENT CO.

Appellant

v

CITY OF DALLAS, PLAINTIFF BELOW
HAROLD HALLEY, JANET M. BRYANT, LANDON J. IRWIN,
ROBERT J. IRWIN, JOHN PATTERSON AND WIFE CAROLYN
A. L. SCHWARTZ, L. A. TOBIAS, G. W. DINSMORE,
TOMMY COLLUM, WILLIAM DAVID COOPER AND L. D. FAIN

Appellees.

ON DIRECT APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHEN
DISTRICT OF TEXAS, DALLAS DIVISION

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED BY THE APPEAL

1. Is due process afforded a landowner, without notice, without just compensation, etc., under Texas's Article 3264, Sec. 1?

2. Does Section 1 of said Article 3264 encourage "instant litigation"?

3. Is a condemnor justified in naming strangers to the title and clouding title to appellant's land for 772 days or more under said Section 1 of Article 3264?

PARTIES BELOW

The parties herein are the same as the parties involved in the City of Dallas's condemnation suit filed long after the seizure of plaintiff's land, all of whom were added in order to cloud appellant's title, for "bargaining" purposes.

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Textbook, "Federal Procedure Forms"
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

BEST INVESTMENT CO.

V *Appellant*

CITY OF DALLAS, PLAINTIFF BELOW
HAROLD HALLEY, JANET M. BRYANT, LANDON J. IRWIN,
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Appellees.

ON DIRECT APPEAL FROM THE UNITED STATES
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JURISDICTIONAL STATEMENT

JURISDICTIONAL STATEMENT

Appeal from the United States District Court for the Northern District of Texas, Dallas Division.

Pursuant to Supreme Court Rule 13(2), Rule 15-1(g) and Rule 28, Best Investment Co., above appellant, files this its statement on which appellant contends that the Supreme Court of the United States has appellate jurisdiction to review on direct appeal the order appealed from herein.

I. OPINION.

No opinion has been reported herein.

II GROUNDS ON WHICH JURISDICTION IS INVOKED

1. The appeal herein is from a September 25, 1981 order of the said United States District Court denying appellant's motion for convening a three-judge court. The notice of appeal was filed in said court on September 29, 1981 and request for certification and transmission was filed on October 8, 1981.

2. Article III, Section 1 of the United States Constitution, together with the 5th and 14th Amendments, confer jurisdiction on this court. The 11th Amendment, which makes such a clear distinction between plaintiff and defendant would not apply. Appellee-City of Dallas is plaintiff in the original condemnation suit herein.

3. The statutory provisions believed to confer on the Supreme Court of the United States jurisdiction of this appeal are: 28 U.S.C. 1253, 28 U.S.C. 2101(b), 28 U.S.C.

1331, 28 U.S.C. 1291 and 28 U.S.C. 2283.

4. Cases believed to sustain the jurisdictio are: Stanton vs. Stanton 421 U.S. 7(1975); Duren vs. Missouri, 99 S.Ct. 664 (1979) and Orr vs. Orr, 99 S.Ct. 1101(1979). In a similar fact situation, the federal due process claim was considered in McCulloch vs. Glasgow, 620 Fed. 2nd, 47.

5. In Lee vs. Macon County Board of Education, 429 Fed. 2nd, 1218, the United States Court of Appeals, Fifth Circuit, ruled in effect that where there are issues respecting constitutionality of a state statute or injunctions against enforcement of state statute, the appeal is to the Supreme Court. In the instant case, both issues are present.

6. The Statute of the State of Texas, the validity of which is involved, is Article 3263, Sec. 1, Vernon's Annotated Civil Statutes which provides that the condemnor must have "Failed to agree with the owner of the land on the amount of damages". without requiring any positive act nor attempt to agree.

III. STATEMENT OF FACTS

In a poor, predominantly Mexican part of town, Appellee-City of Dallas bulldozed a road across a strip of appellant's land, knocking over trees and fences and using the remainder of appellant's land as a "haul road". Although appellant had been awarded clear, uncontested title to said land in a Trepass-To-Try-Title suit, and had paid taxes to appellee-City of Dallas, said appellee wrongfully disregarded said suit and listed most of the losers in said suit as owners when it finally filed its condemnation suit.

None of the other appellees disclaimed any interest in said land until 772 days later, when this suit was filed in the United States District Court. The appellee-City of Dallas apparently defends on the basis that they had "failed to agree", thus meeting the sole requirement for a condemnation suit in Texas.

IV. REASONS WHY QUESTIONS PRESENTED ARE SUBSTANTIAL

1. The U.S. District Court abused its discretion and there is statewide confusion regarding Article 3264, Sec. 1, The Texas Highway Department using its nefarious "One Offer System", etc.

V. CONCLUSION

For the reasons stated, this Court is urged to review and reverse the decision rendered September 25, 1981 in the U.S. District Court for the Northern District of Texas, Dallas Division, wherein said court denied appellants motion to convene a three-judge court and for other relief as the United States Supreme Court may deem proper and just.

One copy of appellant's Jurisdictional Statement received this 3rd day of December, 1981.

KENT S. HOFMEISTER
ASSISTANT CITY ATTORNEY
CITY OF DALLAS
CITY HALL 7BN-1500 MARILLA
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Respectfully submitted,

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Attorney for Appellant

Appendix

APPENDIX A

Article 3264. 6506, 6528 Procedure (Vernon's Ann. Civ. St. Texas)

The exercise of the right of eminent domain shall in all cases be governed by the following rules:

1. When real estate is desired for public use by the State or by a county, or a political subdivision of a county, or by a city or town, or by the United States Government, or by a corporation having the right of eminent domain, or by an irrigation district, water improvement district, or a water power control district created by authority of law, the party desiring to condemn the property after having failed to agree with the owner of the land on the amount of damages shall file a statement in writing with the county judge of the county in which the land or a part thereof is situated. It shall describe the land sought to be condemned, state the purpose for which it is intended to be used, the name of the owner, if known, and that the plaintiff and the owner have been unable to agree upon the value of the land or the damages. Where the land lies in two or more counties, in one of which the owner resides, the statement shall be filed in the county of the owner's residence.

APPENDIX B

No. CC-79-4728-C

CITY OF DALLAS Petitioner	IN THE COUNTY COURT
	AT LAW NO. 3
VS.	
	DALLAS COUNTY, TEXAS
BEST INVESTMENT CO. Defendants	

COMMISSIONERS' REPORT AND AWARD

We, the undersigned Special Commissioners of Condemnation apointed by the Judge of the County Court of Dallas County at Law No. 3, Dallas County, Texas all being disinterested freeholders of Dallas County, Texas having been duly sworn to assess the damages in the above case fairly and impartially and in accordance with law, submit the following report and award to the Court:

In accordance with law, your Commissioners promptly set a time and place for hearing the parties, issued notices in writing to each of the parties interested, which were served and returned as prescribed by law, and thereafter, at the time and place appointed, to-wit: at 10:00 o'clock A.M. on the 19th day of January, 1981, in the Courtroom of the County Court of Dallas County at Law No. 3, your Commissioners proceeded to hear the testimony of the parties, all of whom appeared either in person or by attorney.

Evidence was presented in accordance with the rules of damages established by law, and your Commissioners having heard same now assess the damages as follows:

BEST INVESTMENT CO.	$_____
HAROLD HALLEY	$_____
JANET M. BRYANT	$_____
LANDONJ. IRWIN	$_____
ROBERT J. IRWIN	$_____
JOHN PATTERSON AND WIFE, CAROLYN PATTERSON	$_____
A.L. SCHWARTS	$_____
L.A. TOBIAS	$_____
G.W. DINSMORE	$_____
TOMMY COLLUM	$_____
WILLIAM DAVID HOOPER	$_____
L.D. FAIN	$_____
TOTAL AWARD	$3,600.00

We find that the amount of money offered by theCity of Dallas is less than the amount herein awarded and that the City should pay all the costs of these proceedings, including the Commissioners' fes, which bill is appended hereto, and it is so ordered.

The property sought to be condemned herein is to be used for the purpose of improving a public street in the City of Dallas, Texas, and is described as follows:

BEING a part of the D.R. Cameron Survey, Abstract No. 296, Dallas County, Texas and being in Block 7172, official City numbers and being a part of the land conveyed to David Siegel by instrument dated November 5, 1975 and recorded in Volume 75217, Pages 1374-1377 of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at the northwest corner of Lot 24 in Block 37/7181 and the northeast corner of Block 7172 on the south line of Singleton Boulevard:

THENCE southward along the common line between Blocks 38/7181 and 7172, a distance of 38.26 feet to a point on the proposed south line of Singleton Boulevard;

THENCE angle right 81 deg. 09'' 14'' and westward along the proposed south line of Singleton Boulevard, a distance of 13.38 feet to the beginning of a curve having a radius of 1712.85 feet and a total central angle of 10 deg. 18' 33'';

THENCE continuing westward along the last mentioned curve, through an angle of 08 deg. 50' 13'', bearing to the right, an arc distance of 264.18 feet to a corner cut-off line;

THENCE southwestward along said corner cut-off line, a distance of 6.37 feet to a point on the northeast line of Lumly Street;

THENCE angle right 129 deg. 35' 22'' and northwestard, along said northeast line of Lumly Street, a distance of 46.33 feet to the intersection of same with the aforementioned south line of Singleton Boulevard;

THENCE eastward along the south line Singleton Boulevard, a distance of 157.73 feet to an angle point in same;

THENCE angle left 11 deg. 45' 54'' and northeastward along the southeast line of Sinlgeton Boulevard, a distance of 133.55 feet to the Place of Beginning and containing approximately 10,282 square feet of land.

DATED, SIGNED AND FILED with the Judge of County Court of Dallas County at Law No. 3, this _____ day of _____,1981.

_____

_____

_____

_____

SPECIAL COMMISSIONERS

The above Commissioners Report and Award was filed with me, Judge of the County Court at Law No. 3 of Dallas County, Texas, this the 20th day of January, 1981.

S. Bryan Moore, Jr.

JUDGE, County Court at Law No. 3
Dallas County, Texas

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BEST INVESTMENT CO.,
Plaintiff

CIVIL ACTION

V.

NO. CA-3-81-1047-D

CITY OF DALLAS, ET AL,
Defendants

ORDER

Best Investment Co. (Best), plaintiff, seeks to remove a cloud on title to real estate allegedly arising from a condemnation proceeding brought by the City of Dallas (Dallas), one of the defendants in this action. Best apparently also seeks to have the Texas eminent domain statute, Tex. Rev. Civ. Stat. art. 3264 s 1, declared unconstitutionally vague, preliminary and permanent injunctions issued restraining Dallas from occupying the premises sought to be condemned, monetary damages against Dallas for wrongfully instituting a condemnation proceeding in such a way as to cloud Best's title and cause injury to Best, and an injunction against all the other individual defendants restraining them from asserting any claim to the real estate or any condemnation proceeds.

Best's pleadings are in a remarkable state of confusion. Unfortunately, the defendants have done little to attempt to clarify matters, most notably having failed in general to respond to the Court's order requiring them to raise by

motion their purported defense that Best's complaint fails to state a claim and submit a brief and any necessary documentation in support thereof.

Best filed its original complaint on June 26, 1981. On June 30, 1981, Best filed an "amendment" to its complaint, as is allowed under Rule 15(a) Fed. R. Civ. P. Best attempted, however, merely to delete some paragraphs and substitute new ones, as well as adding new paragraphs. An amended pleading entirely replaces an earlier pleading. 6 Wright & Miller, Federal Practice and Procedure s1504 at 540. In order to preserve all claims and allegations alleged in the prior pleadings that the pleader wishes to retain, the claims and allegations must be realleged in his amended complaint, or at least adopted by reference. See Rule 10(c) Fed. R. Civ. P.[1] This Best had

[1] The new pleading cannot be considered as a supplemental pleading because Rule 15(d), Fed. R. Civ. P., required leave of court whenever a supplemental pleading is sought to be served.

failed to do. It appears to the Court that Best has waived much of what was alleged in his original complaint. The amended complaint does, however, meet the minimum requirements of Fed. R. Civ. P. Rule 8(a), so this action cannot be dismissed on that ground.

Best's original complaint ostensibly challenges the constitutional validity of the Texas eminent domain statute, although Best did not ask as a remedy that the statute be declared unconstitutional. Best did, however, ask that a three-judge court be convened to hear this action under 28 U.S.C. §§2283 and 2284. The only reason why a three-judge court might be necessary is because the constitutionality of a state statute is being questioned. This conclusion

is buttressed by a statement that this "is an action to quiet title and have a state statute declared invalid" in a motion made by Best for an order for service by publication of some non-resident defendants. The confusion arises because Best did not seek as a remedy a delcaration that the statute is unconstitutional and because in responding to a plea of intervention by the State of Texas (Texas) Best denied that it had "fastened itself to the validity of any statute." Best also failed to reallege any of the vagueness issues in its amended complaint, but did assert that relief is sought under §2283 and 2284.

Best has filed a motion for convening a three-judge court. This motion should be denied. Section 2284(a) provides in part that a three-judge court is to be convened when required by an act of Congress. Section 2281, which provided that a three-judge court was required in actions seeking an injunction of the enforcement or execution of a state statute on grounds of unconstitutionality, was repealed in 1976. Best has not directed the Court to any other statute which would require a three-judge court under the circumstances of this case.

The juridictional basis for this action is as poorly defined as the other issues. In its amended complaint, Best stated that this "is a cause of action to quiet title under 28 U.S.C.A. §1655, on diversity of citizenship, as well as the relief sought under 28 U.S.C.A. §2283 and 28 U.S.C.A. §2284." Sectin 1655 allows a district court to order a non-resident or non-appearing defendant to appear in an action to remove any incumbrance or lien or cloud upon the title to real or personal property within the district. This statute only provides for venue under the circumstances described in the statute and in order to invoke it a plaintiff must allege independent grounds for federal

court jurisdiction. Georgia Control Credit Union v. Martin G.M.C. Trucks, Inc., 622 F. 2nd 137, 138 (5th Cir. 1980).

Jurisdiction cannot be based on diversity of citizenship. Best is a resident of Texas, as are several of the defendants. Jurisdiction under 28 U.S.C. §1332 requires complete diversity between the plaintiff and all defendants. Owens Equipment and Erection Co. v. Kroger, 437 U.S. 365, 373 (1978). [2]

[2] A motion for summary judgment was filed by Dallas on the ground that this Court lacks subject matter jurisdiction because there is not complete diversity. If it is determined that the only basis for asserting jurisdiction is diversity, this motion should of course be granted. In the meantime, this Court has jurisdiction to determine if jurisdiction exists. United States v. United Mine Workers of America, 330 U.S. 258, 291-92 (1947).

Thus, the only remaining ground on which jurisdiction can be based is that the Texas eminent domain statute is somehow unconstitutional. From the current state of the pleadings it is impossible for the Court to determine just what Best's allegations are concerning this statute. The amended complaint contained no allegations as to how the statute is unconstitutional, nor has Best expressly asked for a determination of the unconstitutionality of the statute.

Best should, therefore advise the Court exactly what its contentions are regarding the Texas statute and also should specify any other grounds on which jurisdiction can stand. Assuming that it is determined there is jurisdiction to hear this action, the Court is of the view that the

constitutional issue is properly one of law. Best should fully brief the issue, showing how the statute is unconstitutional and citing all relevant authority. Defendants may then submit a reply brief.

In examining the pleadings in this action, it has become apparent that most, if not all, of the individual defendants claim no interest in the property in question. Landon J. Irwin and Robert J. Irwin, defendants, specifically disclaimed any interest in the real estate in their answer. Under Texas law, a party who files a disclaimer is no longer an active or necessary party in a suit involving title to property because title could not be vested in that party. 21 Properties, Inc. v. Romney, 360 F. Supp. 1322, 1327 (N.D. Tex 1973). Since Best is only seeking to enjoin Irwin and Irwin from asserting any claim to the real estate and condemnation proceeds, this action should be dismissed as to them. If any of the other defendants have no interest in the property, they too should file disclaimers so the action can be dismissed as to them. All remaining defendants should specifically advise the Court what interest they are claiming in the property or the condemnation proceeds.

Finally, Texas has filed a plea of intervention in this action. Pending a finding that the Court has jurisdiction and that the constitutionality of the Texas eminent domain statute is being challenged, Texas should be given leave to intervene. If and when Best submits a brief challenging the constitutionality of the statute, Texas should file a reply.

Accordingly, it is ORDERED that:

(1) Best's motion for convening a three-judge court be denied;

(2) the action against Landon J. Irwin and Robert J. Irwin be dismissed and that they recover of the plaintiff Best their court costs;

(3) Best and the other defendants file their briefs, etc. in accordance with this Order; and

(4) the plea of intervention of Texas be granted, subject to a finding by this Court that jurisdiction exists and that the constitutionality of the Texas eminent domain statute is in issue.

This action may be dismissed, or other appropriate sanctions be imposed, should the parties fail to fully comply with this Order.

Dated this 25th day of September, 1981.

Robert M. Hill

United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

BEST INVESTMENT CO.
Plaintiff,

vs.

CIVIL ACTION
NO. CA-3-1047-D

CITY OF DALLAS,ET. AL.
Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Best Investment Co., plantiff above named, hereby appeals to the Supreme Court of the United States from the final order denying plantiff's motion for convening a three-judge court entered in this action on September 25, 1981.

This appeal is taken pursuant to Title 28, United States Code, Sections 2101b and 1252 since injunction is sought herein.

JOHN J. SOLON
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(214) 350-0908